

## § 386.1

386.17 Intervention.

### Subpart C—Compliance and Consent Orders

386.21 Compliance order.

386.22 Consent order.

386.23 Content of consent order.

### Subpart D—General Rules and Hearings

386.31 Service.

386.32 Computation of time.

386.33 Extension of time.

386.34 Official notice.

386.35 Motions.

386.36 Motions to dismiss and motions for a more definite statement.

386.37 Discovery methods.

386.38 Scope of discovery.

386.39 Protective orders.

386.40 Supplementation of responses.

386.41 Stipulations regarding discovery.

386.42 Written interrogatories to parties.

386.43 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examination.

386.44 Request for admissions.

386.45 Motion to compel discovery.

386.46 Depositions.

386.47 Use of deposition at hearings.

386.48 Medical records and physicians' reports.

386.49 Form of written evidence.

386.50 Appearances and rights of witnesses.

386.51 Amendment and withdrawal of pleadings.

386.52 Appeals from interlocutory rulings.

386.53 Subpoenas, witness fees.

386.54 Administrative law judge.

386.55 Prehearing conferences.

386.56 Hearings.

386.57 Proposed findings of fact, conclusions of law.

386.58 Burden of proof.

### Subpart E—Decision

386.61 Decision.

386.62 Review of administrative law judge's decision.

386.63 Decision on review.

386.64 Reconsideration.

386.65 Failure to comply with final order.

386.66 Motions for rehearing or for modification.

386.67 Appeal.

### Subpart F—Injunctions and Imminent Hazards

386.71 Injunctions.

386.72 Imminent hazard.

### Subpart G—Penalties

386.81 General.

## 49 CFR Ch. III (10–1–01 Edition)

386.82 Civil penalties for violations of notices and orders.

386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

386.84 Sanction for failure to pay civil penalties or abide by payment plan; suspension or revocation of registration.

APPENDIX A TO PART 386—PENALTY SCHEDULE; VIOLATIONS OF NOTICES AND ORDERS  
APPENDIX B TO PART 386—PENALTY SCHEDULE; VIOLATIONS AND MAXIMUM MONETARY PENALTIES

AUTHORITY: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; sec. 206, Pub. L. 106–159, 113 Stat. 1763; and 49 CFR 1.45 and 1.73.

SOURCE: 50 FR 40306, Oct. 2, 1985, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 386 appear at 65 FR 7755, Feb. 16, 2000 And 66 FR 49873, Oct. 1, 2001.

### Subpart A—Scope of Rules; Definitions

#### § 386.1 Scope of rules in this part.

The rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration (FMCSA), under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379) and the Hazardous Materials Regulations (49 CFR parts 171–180). The purpose of the proceedings is to enable the Assistant Administrator to determine whether a motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations and, if such violations are found, to issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both.

[65 FR 78427, Dec. 15, 2000]

#### § 386.2 Definitions.

*Abate or abatement* means to discontinue regulatory violations by refraining from or taking actions identified in a notice to correct noncompliance.

*Administration* means the Federal Motor Carrier Safety Administration.

*Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

*Assistant Administrator* means the Assistant Administrator of the Federal Motor Carrier Safety Administration. The Assistant Administrator is the Chief Safety Officer of the agency pursuant to 49 U.S.C. 113(d). Decisions of the Assistant Administrator in motor carrier, broker, freight forwarder, and hazardous materials proceedings under this part are administratively final.

*Broker* means a person who, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier. A motor carrier, or person who is an employee or bona fide agent of a carrier, is not a broker within the meaning of this section when it arranges or offers to arrange the transportation of shipments which it is authorized to transport and which it has accepted and legally bound itself to transport.

*Civil forfeiture proceedings* means proceedings to collect civil penalties for violations under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Chapter 313); the Hazardous Materials Transportation Act of 1975, as amended (49 U.S.C. Chapter 51); the Motor Carrier Safety Act of 1984 (49 U.S.C. Chapter 311, Subchapter III); section 18 of the Bus Regulatory Reform Act of 1982 (49 U.S.C. 31138); section 30 of the Motor Carrier Act of 1980 (49 U.S.C. 31139); and the FMCSA Termination Act of 1995 (49 U.S.C. Chapters 131-149).

*Claimant* means the representative of the Federal Motor Carrier Safety Administration authorized to make claims.

*Commercial regulations* means statutes and regulations that apply to persons providing or arranging transportation for compensation subject to the Secretary's jurisdiction under 49 U.S.C. Chapter 135. The statutes are codified in Part B of Subtitle IV, Title 49, U.S.C. (49 U.S.C. 13101 through 14913). The regulations include those issued by the Federal Motor Carrier Safety Administration or its predecessors under authority provided in 49 U.S.C. 13301 or a predecessor statute.

*Compliance Order* means a written direction to a respondent under this part requiring the performance of certain acts which, based upon the findings in the proceeding, are considered necessary to bring respondent into compliance with the regulations found to have been violated.

*Consent Order* means a compliance order which has been agreed to by respondent in the settlement of a civil forfeiture proceeding.

*Driver qualification proceeding* means a proceeding commenced under 49 CFR 391.47 or by issuance of a letter of disqualification.

*Final agency order* means a notice of final agency action issued pursuant to this part by either the appropriate FMCSA Field Administrator (for default judgements under §386.14(e)), the FMCSA Chief Safety Officer, or an Administrative Law Judge (ALJ), typically requiring payment of a civil penalty by a broker, freight forwarder, driver, or motor carrier.

*Freight forwarder* means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

(1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments;

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to FMCSA jurisdiction.

*Motor carrier* means a motor carrier, motor private carrier, or motor carrier of migrant workers as defined in 49 U.S.C. 13102 and 31501.

*Petitioner* means a party petitioning to overturn a determination in a driver qualification proceeding.

*Respondent* means a party against whom relief is sought or claim is made.

[50 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988; 56 FR 10182, Mar. 11, 1991; 65 FR 7755, Feb. 16, 2000; 65 FR 78427, Dec. 15, 2000]